

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION

CIVIL NO. 2:06CV4

STATE OF NORTH CAROLINA, )  
*ex rel.*, and NICHOLAS JACK )  
AYERS, )  
Plaintiffs, )  
vs. ) **MEMORANDUM AND ORDER**  
JAY SELLERS, in his Official )  
Capacity as a North Carolina State )  
Trooper; BOBBY M. DEBRUHL, )  
Individually and in his Official )  
Capacity as Sheriff of Graham )  
County; SCOTT CALDWELL, )  
Individually and in his Official )  
Capacity as an Employee of the )  
Sheriff of Graham County; )  
BRIAN JONES, Individually and in )  
his Official Capacity as an Employee )  
of the Sheriff of Graham County; and )  
FIDELITY AND DEPOSIT )  
COMPANY OF MARYLAND, )  
Surety for Sheriff Bob DeBruhl, )  
Defendants. )

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THIS MATTER is before the Court on the Magistrate Judge's Fourth  
Memorandum and Recommendation.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On June 4, 2007, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding the motion of Defendant Jay Sellers to dismiss Plaintiff's claims against him in his official capacity as a North Carolina State Trooper.<sup>1</sup> The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on June 21, 2007. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the

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<sup>1</sup> Because the Plaintiff was proceeding *pro se* at the time Defendant Sellers filed his motion to dismiss, the Magistrate Judge issued a *Roseboro* Order on April 30, 2007. Plaintiff thereafter retained counsel and his attorney filed Notice of Appearance on May 25, 2007.

record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant Sellers' motion be allowed in its entirety.

**IT IS, THEREFORE, ORDERED** that the motion of Defendant Sellers to dismiss is **ALLOWED**, and the Plaintiffs' claims are hereby **DISMISSED WITH PREJUDICE** as to Defendant Jay Sellers in his official capacity.

Signed: June 25, 2007



Lacy H. Thornburg  
United States District Judge

